IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos. 22249/2004, 22340/2004 & 430/2005

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WRIT PETITION NO : 22249 of 2004

Between:

Gavara Demudu, S/o. Late G. Yerri Naidu,
5-30, Peda Narava, Gopalapatnam, Visakhapatnam-27.

..... PETITIONER

AND

Visakhapatnam Port Trust, being rep. by its Chairman,
Visakhapatnam-35.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent in issuing the impugned order letter No. E/HAE/SR & PC/2305 Dt. 01.10-2004 ordering the petitioner to retire on 31.12.2004 A.N. at the age of 58 years instead of 60 years as illegal, arbitrary, in violation of Articles 14 and 16 of Constitution of India and also contrary to resolution No. 59/2000-2001 Dt. 25.09.2000 of the Respondent and against the principles of natural justice and consequently to set-aside the impugned order by directing the Respondent to allow the petitioner to continue to work as Mason Grade-II in the Engineering Department of the Respondent with all consequential benefits till he attains the age of 60 years.

Counsel for the Petitioner: MR.J.CH.Y.NARASIMHAM

Counsel for the Respondent: Mr. P. Sree Raghu Ram.

WRIT PETITION NO : 22340 of 2004

Between:

P.Dharma Raju, S/o.Kondaiah, (Late),
R/o.38-13-46, Laxmi Nagar, N.H.5 Road,
Marripalem post, Visakhapatnam-18.

..... PETITIONER

AND

Visakhapatnam Port Trust, being rep.by its' Chairman, Visakhapatnam-35.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the Respondent in issuing the impugned order Letter No.E/HAE/SR & PC/2125 dt.01-10-2004 ordering the petitioner to retire on 31-12-2004 A.N.at the age of 58 years instead of 60 years as illegal, arbitrary, in violative of Articles 14 and 16 of Constitution of India and also contrary to Resolution No.59/2000-2001 dt. 25-09-2000 of the Respondent and against the principles of natural justice and consequently to set-aside the impugned order by directing the Respondent to allow the petitioner to continue to work as Fitter Grade-II in the Engineering Department of the Respondent with all consequential benefits till he attains the age of 60 years.

Counsel for the Petitioner:MR.J.CH.Y.NARASIMHAM

Counsel for the Respondent: MR.P.SRI RAGHU RAM

WRIT PETITION NO : 430 of 2005

Between:

M. Suryanarayana, S/o. Late M. Simhachalam,
R/o. H.No. 37-4-29, Industrial Estate, Suryanagar-2, Visakhapatnam-7.

..... PETITIONER

AND

Visakhapatnam Port Trust, Being Rep. by its Chairman

Visakhapatnam - 35

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the Respondent in issuing the impugned order Letter No.E/SR/2598/338 Dt. 15-12-2004 ordering the petitioner to retire on 28-02-2005 A.N at the age of 58 years instead of 60 years as illegal, arbitrary, in violtion of Articles 14 and 16 of Constitution of India and also contrary to Resolution No. 59/2000-2001 Dt. 25-09-2000 of the Respondent and against the principles of natural justice and consequently to set-aside the impugned order by directing the Respondent to allow the petitioner to continue to work as Senior gangman in the Engineering Department of the Respondent with all consequential benefits till he attains the age of 60 years.

Counsel for the Petitioner:MR.J.CH.Y.NARASIMHAM

Counsel for the Respondent: MR.P.SRI RAGHU RAM

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No.22249 of 2004
W.P. No. 22340 of 2004
and
W.P. 430 of 2005

COMMON ORDER:

Challenging the action of the respondent in issuing the impugned orders dated 1.10.2004, 1.10.2004 and 15.12.2004 respectively ordering the petitioners herein to retire at the age of 58 years instead of 60 years as illegal and arbitrary, the present writ petitions are filed. As the issue involved is common in all the three

writ petitions, they are being disposed of by this common order.

The brief facts in W.P. 22340 of 2004 are that the petitioner was appointed as a casual labour in the respondent-Port Trust on 1.1.1969 through due process of recruitment. After completion of 6½ years of casual service, his services were regularized as Kalashi Shore w.e.f. 28.4.1975. Presently he is working as Fitter Grade-II in the scale of Rs.6430/- in the Workmen Cadre. While so, the respondent issued a letter No.E/HAE/SR&PC/2125 dated 1.10.2004 informing the petitioner to retire on superannuation w.e.f. 31.12.2004 at the age of 58 years. Thereafter he gave a representation through proper channel but the respondent has not taken any action. Hence the present writ petition.

It is admitted in the counter that the petitioner was appointed as a temporary Shore-Khallasi w.e.f. 28.4.1975 but it is stated that there are no records available with the respondent to show that he was working as casual labour. It is admitted that the Fitter Grade-II comes under the category of workmen. The petitioner was appointed on regular basis w.e.f. 28.4.1975 and has kept quiet for 29 years and at the fag end of his service filed the present writ petition. As the petitioner was appointed w.e.f. 28.4.1975, he is due to retire on attaining the age of 58 years as per the Regulations. Hence the respondents pray to dismiss the writ petition.

The brief facts relating to W.P. 22249 of 2004 may be stated as follows:

The petitioner herein was appointed as a casual labour on 18.2.1970 in the Engineering Department after following the due

process of recruitment vide appointment order dated 13.2.1970. After completion of 7½ years of service, his services were regularized as casual labour w.e.f. 1.9.1977. Presently he is working as Mason Grade-II in the scale of Rs.6430/- in the workmen cadre. While so, the respondent vide letter No.E/HAE/SR&PC/2305 dated 1.10.2004 informed the petitioner to retire on superannuation w.e.f. 31.12.2004 at the age of 58 years. Hence the present writ petition.

It is admitted in the counter that the petitioner was appointed as a temporary Shore-Khallasi w.e.f.1.9.1977 but it is stated that there are no records available with the respondent to show that he was working as casual labour. It is admitted that the Fitter Grade-II comes under the category of workmen. The petitioner was appointed on regular basis w.e.f. 28.4.1975 and has kept quiet for 29 years and at the fag end of his service filed the present writ petition. As the petitioner was appointed w.e.f. 28.4.1975, he is due to retire on attaining the age of 58 years as per the Regulations. Hence the respondents pray to dismiss the writ petition.

The brief facts in W.P. 430 of 2005 may be stated as follows:

The petitioner joined service as casual labour on 7.10.1968 through due process of recruitment. After completion of 11 years of casual service, his services were regularized as Gangman w.e.f. 28.6.1979 and presently he is working as Gangman Senior in the scale ofRs.6360/- in the workmen cadre. While so, the respondent vide Letter No.E/SR/2598/338 dated 15.12.2004 informed the petitioner to retire on superannuation w.e.f. 28.2.2005 at the age of 58 years. Hence the present writ petition.

The respondent filed counter stating that the petitioner was appointed as temporary Gangman on regular basis w.e.f. 29.6.1979 but not 28.6.79 as stated by the petitioner but there are no records available from which date he was working as casual labour. The category of Gangman will not come under workmen category as it was not declared as such by the respondent-Port Trust. The petitioner having been appointed on regular basis w.e.f. 29.6.1979 kept quite for 36 years and at the fag end of his service filed the writ petition. Having been appointed on regular basis w.e.f. 29.6.1979 he has to retire on attaining the age of superannuation at the age of 58 years. Hence the writ petition is liable to be dismissed.

In all these writ petitions the learned counsel for the petitioner contended that as per Regulation 3 of the Visakhapatnam Port Employees (Retirement) Regulations, 1989 the petitioners come within the meaning of 'workmen' for whom the age of retirement is 60 years and therefore the petitioners are entitled to be continued till the age of 60 years. Learned counsel for the petitioners also placed reliance on the orders dated 29.6.2004 of a Division Bench of this Court in W.A. Nos. 551 and 729 of 2004.

On the other hand, learned counsel for the respondent contended that the petitioners did not produce any material to show that they were appointed prior to 1974. As per the service rules, a workman and an employee in Class-IV who joined the Board service prior to 18.7.1974 alone is entitled to continue till the age of 60 years. Therefore, the respondent rightly issued the proceedings asking the petitioners to retire from service on attaining superannuation at the age of 58 years and hence the writ petitions are liable to be

dismissed.

The service conditions of the writ petitioners are govered by the Visakhapatnam Port Employees (Retirement) Regulations, 1989. With regard to the age of retirement, the following rules and regulations are framed:

> "(1) Except and otherwise provided in these Regulations, every employee who joined Board's service on or after 18.7.1974 shall retire on superannuation on the afternoon of the last day of the month in which he attains the age of fifty eight years
>
> (2) All employees in Class-I, II and Class-III posts, other than workmen, appointed prior to 18.7.1974 shall also retire from service on the afternoon of the last day of the month in which they attain the age of Fifty Eight years.
>
> (3) A 'workman' and an employee in Class-IV post, who joined Board's service prior to 18.7.1974, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years".

For the purpose of disposal of the present writ petitions, Clause (3) of the above Regulations is important. A plain reading of this clause shows that a workman and an employee in Class-IV post, who joined Board's service prior to 18.7.1974, shall retire from service on the last day of the month in which he attains the age of 60 years. If the petitioners are appointed prior to 18.7.1974 and if they come within the meaning of workmen, then there will not be any difficulty in holding that they are entitled to continue till the age of supernnuation

of 60 years.

Learned counsel for the petitioner vehemently contended that the petitioner in W.P. 22249 of 2004 was appointed as a casual labour on 13.2.1970 whereas the petitioner in W.P. 430 of 2005 was appointed as casual labour on 4.11.1968 and whereas the petitioner in W.P. 22340 of 2004 was appointed as casual labour on 1.1.1969, but their services were regularized after 1974; therefore the initial date of appointment has to be taken into consideration but not the date of regularization for the purpose of deciding the superannuation. For that purpose, he placed reliance on the judgment of a learned single Judge of this court in W.P.Nos. 269 and 11152 of 2003 wherein it is held:

> "The petitioner was appointed as a Gangman on 7.2.1968 and continuously worked up to 26.6.1978 and therefore there is no dispute that the petitioner is a workman as defined in the Visakhapatnam Port Employees (Retirement) Regulations, 1989. If that be so, as the petitioner is appointed as workman and he is in service prior to 18.7.1974, he is entitled to be continued till he attains the age of 60 years. He will have to be retired from service on attaining the age of 60 years only. After his regularization if he becomes the regular employee and if his services are regularized prior to the date of 18.7.1974 treating on par with his juniors appointed in 1968 he is also entitled for work till he attains the age of superannuation as per the said regulations".

The said judgment was affirmed by a Division Bench of this court in W.A. Nos. 551 and 729 of 2004 dated 29.6.2004 wherein it is held:

> “In view of this legal position for the purpose of consideration for promotion the date of regularization alone may have to be reckoned and not the date of initial appointment. It is made clear that in view of Regulation 3, as far as the age of superaqnnuation is concerned, the workman is entitled to continue up to the age of 60 years. The aspect of regularization and consideration for promotion would stand on a different footing since these two are two different questions altogether”.

There is no dispute about the decision rendered by the Division Bench of this court above. Having come to the court it is for the petitioners to establish that they were selected by following the due process of recruitment and they were appointed prior to 18.7.1974 because the respondent has taken a plea that no records were available with it from which date the petitioners were working as casual labours and there is no possibility of tracing the old records in support of their casual service since the old records were weeded out as per the Government letter dated 5.11.1980. It is also stated that it is not possible to verify the service rendered by them as casual labours at this distant date, that too, at the fag end of their service. The petitioners in spite of taking such a plea did not file any material to show that they were appointed prior to 18.7.1974. Unless the petitioners show that they were appointed prior to 18.7.1974, their services cannot be counted. The material filed by the petitioners show that the names of the petitioners have been sponsored by the Employment Exchange. Insofar as the writ petitioner in W.P. 22249 of 2004 is concerned, his name was sponsored by the Employment Exchange and he was appointed as a casual mazdoor on 18.2.1970.

Sofar as the other writ petitioners are concerned, no document is filed to show that they were appointed prior to 18.7.1974. Having come to the court, it is for the petitioners in W.P. 430 of 2005 and W.P. 22340 of 2004 to establish that they were appointed prior to 18.7.1974. In the absence of any material, it cannot be said that they were appointed prior to 18.7.1974. Therefore, the question of their continuation up to 60 years does not arise. Whereas, the petitioner in W.P. 22249 of 2004 has produced two documents which are not shown to be false or incorrect. It may be true that the petitioner joined the service on 18.2.1970. Following the judgment rendered by the Division Bench referred above, this court has no hesitation in holding that the workman is entitled to continue up to the age of 60 years because the date of joining into service is material as per Regulation 3(3) of the Regulations. The services of the petitioner in W.P. 22249 of 2004 were not regularized for no fault of him. So, the initial date of appointment shall have to be considered. Therefore, W.P. 22249 of 2004 has to be allowed.

Accordingly, W.P. 22249 of 2004 is allowed quashing the impugned order therein dated 1.10.2004 and W.P.Nos. 22340 of 2004 and 430 of 2005 are dismissed as devoid of merit, in the circumstances, without costs.

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K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman,Visakhapatnam Port Trust,
Visakhapatnam-35.

2. Two C.D copies.